IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 9 OF 2006

Ceaser Rodrigues,
s/o Alberto Rodrigues,
r/o H. No. 108,
Borchebhatt, Caranzalem,
Panaji, Goa. ... Applicant

versus

State, through the
Public Prosecutor. ... Respondent

Mr. S. G. Bhobe, Advocate for the Applicant.

Ms. W. Coutinho, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 13TH JULY, 2006.

ORAL JUDGMENT

This revision is filed by the accused who has been convicted and sentenced under Sections 279, 304-A, 337 and 338 I.P.C. and whose conviction and sentence has been upheld by the learned Sessions Judge, Panaji.

2. An accident took place on 3-3-2000 at about 3.30 p.m. at Nagoa in Bardez Taluka between the tempo traveler bearing No.GA-01-T-4282 driven by the accused and a Maruti Van bearing No. GA-01-V-3728 driven by PW1/Vishvanath Agarvadekar in which there were four lady passengers out of which two died and the remaining two were examined as witnesses for the prosecution namely PW2/Pushpavati Agarvadekar and PW3/Surat Kalangutkar. The deceased were Rukmini Vital Agarvadekar and Madhumati P. Ramnathkar.

3. The accused was proceeding from Arpora towards Saligao in West-East direction while PW1/Vishvanath Agarvadekar was proceeding from Calangute towards Mapusa in South-North direction. The accident took place at the junction of the said two roads. The evidence on record shows that the accused was driving a bigger vehicle on a comparatively narrow road while PW1/Vishvanath Agarvadekar was driving a smaller vehicle on the main road which was broader and with heavy traffic.

4. After the accident took place at about 3.30 p.m. on

3-3-2000, it was noticed by PW5/Kalidas Shetkar who informed the Anjuna Police Station on wireless and PW6/Head Constable Arjun Majik who was the Officer in charge of Anjuna Police Station at the relevant time proceeded to the scene of offence and conducted the panchanama and the sketch in support whereof both PW4/Tulshidas Narvekar as well as the said PW6/Arjun Majik were examined. PW8/S. Chodankar was otherwise in charge of Anjuna Police Station who after the receipt of information that two of the said ladies had expired at around 21.30 hours, lodged a formal complaint against the accused under the said Sections, after perusing the panchanama and the sketch of the scene of offence which were available by then. It appears that till then, the statement of PW1/Vishvanath Agarvadekar was not recorded and was recorded subsequently.

5. The accused was tried under the said Sections, convicted and sentenced. In fact, the learned J.M.F.C. has sentenced the accused under Section 279 to undergo one month S.I. and to pay a fine of Rs.1000/- in default to undergo fifteen days S.I.; under Section 337 the accused is sentenced till rising of the Court and to pay a fine of Rs.500/- and in default to

undergo three days S.I.; under Section 338 I.P.C. the accused is sentenced to undergo S.I. till rising of the Court and to pay a fine of Rs.1000/- and in default to undergo fifteen days S.I. and under Section 304-A to undergo three months S.I. and to pay a fine of Rs.2,500/- and in default to undergo fifteen days S.I. If the fines are realized they are also ordered to be paid to the victims mentioned in the Judgment.

6. In the trial, the prosecution had examined as many as eight witnesses. The important amongst them was PW1/Vishvanath Agarvadekar, the driver of the other vehicle involved in the accident, PW2/Pushpavati Agarvadekar, who was sitting at the back of the said Maruti Van and PW3/Surat Kalangutkar who was sitting on the front seat of the said van. PW4/Tulshidas Narvekar was the panch witness and PW6/Arjun Majik was the Officer who conducted the scene of offence panchanama and the sketch. The formal F.I.R. and the charge-sheet were submitted by PW8/S. Chodankar, Police Inspector.

7. This being a revision petition, the scope for interference is limited. In other words, it is not permissible for

this Court sitting in revision to re-assess the evidence led by the prosecution or to go in depth examination of the same. Interference of this Court would be justified only in case the conclusion on facts recorded by both the Courts below is based on any serious infirmity or for that matter if there is failure of justice. In my view, there is no such error committed by the Courts below.

8. In the above background, Mr. S. G. Bhobe, the learned Counsel on behalf of the applicant/accused has submitted that PW8/S. Chodankar had recorded the F.I.R. against the accused without any statements being there before him or for that matter without visiting the scene of offence and being so, the investigations proceeded on the wrong approach, right from inception. The learned Counsel further submits that the versions given by PW1/Vishvanath Agarvadekar or for that matter PW2/Pushpavati Agarvadekar and PW3/Surat Kalangutkar could not have been accepted. According to the learned Counsel, PW1/Vishvanath Agarvadekar has not even stated that the accused was driving in a rash or negligent manner. He has further submitted that PW2/Pushpavati Agarvadekar and

PW3/Surat Kalangutkar being in the company of ladies would have been more concerned in conversation and would have not noticed whether PW1/Vishvanath Agarvadekar had taken any precaution before entering the said junction and, therefore, their evidence appears to be inherently improbable. The learned Counsel further submits that PW1/Vishvanath Agarvadekar would have been certainly inclined to blame the other driver namely the accused in order to save himself. It is further submitted that both the Courts below have proceeded mainly on the sketch of the scene of offence.

9. I am not inclined to accept any of the submission of learned Counsel. The submission that the F.I.R. was recorded on the basis of panchanama or the sketch, can neither affect the investigations nor the evidence in the trial held. In fact the panchanama and the sketch in many cases are sufficient to give a first impression as to who was at fault in the accident.

10. There is not even a suggestion put to PW2/Pushpavati Agarvadekar or for that matter PW3/Surat Kalangutkar that they were busy talking amongst themselves when the impact took

place. PW1/Vishvanath Agarvadekar has clearly stated that the accused came with the said tempo traveler all of a sudden and dashed the Maruti Van on the left side. The accident reports produced by the prosecution to a great extent support his version and show that it is the front portion of the tempo traveler driven by the accused which went and dashed against the left hand side of the van driven by PW1/Vishvanath Agarvadekar as a result of which the said van turned turtle causing injuries to PW1/Vishvanath Agarvadekar, PW2/Pushpavati Agarvadekar and PW3/Surat Kalangutkar and serious injuries to the deceased who died subsequently in the hospital. As regards the injuries as well as the death, there is no dispute raised. The evidence of PW1/Vishvanath Agarvadekar is also supported by the panch who was examined to support the sketch and the panchanama produced by him apart from the fact that it is also corroborated by PW2/Pushpavati Agarvadekar and PW3/Surat Kalangutkar. As already stated the accused was moving in West-East direction while PW1/Vishvanath Agarvadekar was moving on South-North direction and the accident took place almost in the middle of the junction of the said roads. In fact, the sketch shows that it is a junction where

five roads meet proceeding in five different directions. The sketch and the panchanama do not show that the accused had made any effort even to apply brakes since no brake marks can be seen from the panchanama and the sketch. The road in which PW1/Vishvanath Agarvadekar was moving was the main road and was otherwise broad and with heavy traffic. It was certainly the duty of the accused as he was entering from a narrow road unto the junction of the said road to have taken greater precaution before entering the same. This the accused did not do and this is evident from the evidence given by the three witnesses who witnessed the accident. It was certainly not expected of PW1/Vishvanath Agarvadekar to repeat the words of Section to say that the accused was rash or negligent. The very statement of PW1/Vishvanath Agarvadekar that the accused came with his tempo and dashed against his Maruti Van from the left side in itself gives an impression that it was the accused who was at fault in driving the said vehicle and going and dashing against his van. A grievance was also made that one Bhamini Diukar, who was a pedestrian was not examined. This aspect has been dealt with by the learned trial Court. One also does not know under what circumstances she was not examined. In

my view, the prosecution certainly was not expected to duplicate the evidence. Considering the other evidence on record, her non examination would not be fatal to the case of the prosecution.

11. In my view, both the Courts below have rightly assessed the evidence led by the prosecution and have come to the conclusion that the accident took place on account of the rashness and negligence on the part of the accused who was at the relevant time driving the tempo traveler. As regards the sentence, the learned Sessions Judge has already noted that the learned J.M.F.C. has already taken a lenient view. It is to be noted that two precious lives have been lost in this accident and the sentence imposed certainly could not be less than what has been imposed.

11. I do not find any merit in this revision and consequently the same is hereby dismissed.

N. A. BRITTO, J.

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